

SENATE BILL 845
By McNally

AN ACT to amend Tennessee Code Annotated, Title 39; Title 40;
Title 41 and Title 47, relative to the prosecution of
worthless checks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-3-203, is amended by deleting the
section in its entirety and by substituting instead the following:

(a) Each district attorney general is authorized and empowered to establish, at
such district attorney general's discretion, a special economic crimes division of such
district attorney general's office which shall be under such district attorney general's
direction and control. Each district attorney general is further authorized to establish a
worthless check unit for the purpose of processing worthless checks in compliance with
subsections (b) through (j) of this section.

(b) Following compliance with procedures set forth in Tennessee Code
Annotated, Section 39-14-121, any party holding a worthless negotiable instrument may
present a complaint to the worthless check unit of the economic crimes division of the
district attorney general's office. Each complaint shall be accompanied by the original
negotiable instrument, or a photographic copy if the original is unavailable, and, except
in those situations enumerated in Tennessee Code Annotated, Section 39-14-121(e),
the return receipt and copy of the ten (10) day letter mailed to the accused. The

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complaint shall be reviewed by the worthless check unit to determine whether the complaint is appropriate to be processed by the worthless check unit.

(c) A complaint may be withdrawn by the person filing such complaint after satisfying a service charge of thirty dollars (\$30.00) to the worthless check unit for processing such complaint. Upon payment of this fee, the check and other information will be returned to the complainant.

(d) After approval of the complaint, a warrant may be issued. The warrant may be held by the worthless check unit and notification sent to the individual charged with violating Tennessee Code Annotated, Section 39-14-121, that a warrant has been issued for such individual's arrest or that a complaint has been received by the worthless check unit. Such notice may be sent by mail and shall inform the accused individual that such individual may be eligible for deferred prosecution by voluntarily surrendering to the worthless check unit within ten (10) business days from the date of the notice.

(e) Upon voluntary surrender, the accused may be presented with the warrant or complaint. Prosecution may be deferred upon the execution of a restitution agreement which shall contain the terms by which the restitution and service charge may be paid.

(f) If, after receiving such notice, the accused does not voluntarily surrender to the worthless check unit within the time prescribed, prosecution shall proceed in accordance with applicable laws and procedures.

(g) The economic fraud division may charge a service charge in the stated amounts in the following circumstances:

(1) In those cases in which an accused voluntarily surrenders to the worthless check unit within the prescribed time, the worthless check unit may collect the sum of fifty dollars (\$50.00) from the accused as a service charge for processing the worthless check.

(2) In those cases in which the accused does not appear within the prescribed time, or if no restitution agreement is made, or if the accused does not comply with the restitution agreement, the case may be prosecuted under the applicable laws and procedures. Upon appearance of the accused in the appropriate court, the court shall order the accused to pay, as a part of the costs, the amounts set forth in Tennessee Code Annotated, Section 40-3-204(1), in addition to any other costs assessed by the court for such violation. The fees provided for in this section shall be deposited as set forth in Section 40-3-207.

(h) Restitution agreements shall be permitted subject to the following definitions and limitations:

(1) Restitution shall be defined as the face amount of the negotiable instrument, including the amount to which it was altered, in the case of a forged instrument, plus any amounts the victim was required to pay to any bank as a result of the attempt to process the negotiable instrument, and a service charge in the amount as provided in Tennessee Code Annotated, Section 47-29-102.

(2) Upon filing a complaint with the worthless check unit, the complainant waives the right to collect restitution from the accused. If the complainant collects any payment or restitution without the written consent of the worthless check unit, the complaint may be considered to have been withdrawn, and the complainant required to pay the fee for withdrawing the complaint.

(3) If the accused enters into a restitution agreement, the terms of such agreement shall be determined on a case by case basis, but the duration of any such agreement shall not be for longer than a period of six (6) months. No interest may be charged or collected on the restitution or fees charged. If the terms of the restitution agreement are not honored, the district attorney general's office may proceed with the prosecution as provided by law.

(4) Restitution shall be collected by the worthless check unit and deposited into an account maintained solely for such purpose. After collection of the restitution amount, the worthless check unit shall, after a reasonable time for accounting and bookkeeping purposes, disburse to the victim the restitution collected with regard to the original complaint.

(5) If the victim cannot be located after a reasonable time and upon diligent efforts to locate same, the restitution due such victim shall be deposited in accordance with Tennessee Code Annotated, Section 40-3-207.

(i) All fees and charges collected under this program shall be deposited as provided in Tennessee Code Annotated, Section 40-3-207.

(j) If the worthless check unit receives an amount from an accused which is more than the amount owed as set forth in the restitution agreement, the worthless check unit shall refund the amount overpaid if it is five dollars (\$5.00) or more greater than the amount owed.

SECTION 2. Tennessee Code Annotated, Section 40-3-202, is amended by adding the following as a new subdivision (5):

(5) The hiring of additional assistant district attorneys general, investigators, secretaries, clerks or other personnel necessary to carry out the purposes of this part.

SECTION 3. Tennessee Code Annotated, Section 40-3-204(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) Worthless check prosecutions. The amount of the fee shall be sixty dollars (\$60.00) if the face value of the negotiable instrument is under five hundred dollars (\$500.00), and seventy-five dollars (\$75.00) if the face value of the negotiable instrument is five hundred dollars (\$500.00) or more.

SECTION 4. Tennessee Code Annotated, Section 40-3-209(b), is amended by adding the following language at the end of the subsection:

However, the district attorney general may use the funds collected as a result of this program to hire additional attorneys, investigators, secretaries, clerks or other personnel necessary to carry out the purposes of this part.

SECTION 5. Tennessee Code Annotated, Section 47-29-102, is amended by substituting the following language:

Handling Charge. When any check, draft, or order is not paid by the drawee because the maker or drawer did not have an account with or sufficient funds on deposit with the financial institution, or the draft, check, or order has an incorrect or insufficient signature thereon, the payee of such check, draft, or order is authorized to assess a handling charge against such maker or drawer in an amount not to exceed twenty-five dollars (\$25.00).

SECTION 6. this act shall take effect upon becoming a law, the public welfare requiring it.